

# Macarthur Legal Centre

## FAMILY LAW MATTERS SERIES: PARENTING ARRANGEMENTS



### Useful Contacts

- Macarthur Legal Centre can provide **free** advice and legal assistance in relation to parenting matters.  
**Contact us on (02) 4628 2042.**
- Contact the Department of Human Services on 1800 050 004.
- Contact the Macarthur Family Dispute Resolution Centre on (02) 4629 7000 for mediation.
- Contact Legal Aid on (02) 4620 1199 for free advice and representation.
- Visit the Family Law Courts website [www.familycourts.gov.au](http://www.familycourts.gov.au) for further information.

## PARENTING

Under the *Family Law Act 1975* (Cth), children have “rights” and parents have “responsibilities”. When determining children’s issues, and parenting arrangements, **the best interests of the child** should always be the main consideration.

There’s no right to “equal shared care” under the Family Law Act. There is however, a presumption of ***equal shared parental responsibility***. This presumption continues, post-separation. Parental responsibility includes all major decision-making in respect to children (for example, education, living arrangements, religious upbringing, medical treatment, international travel etc.).

A Court will only make Orders for “sole” parental responsibility in exceptional cases, and where it is in the best interests of the child/ren (for example, where one parent has abrogated their parental responsibilities; or where family violence, abuse and/or neglect have been substantiated). Accordingly, the law requires the majority of parents to continue to share parental decision-making, post-separation.

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The *Family Law Act 1975* (Cth) further provides that where parents have ***equal shared parental responsibility***, a Court must consider ***equal shared care***. However, a Court can only make Orders for ***equal shared care*** in cases where it is ***reasonably practicable and in the best interests of the child/ren***.

### **Post Separation Parenting Arrangements**

There are a variety of issues parents should consider post-separation, these might include:

- Where the child/ren will live;
- Time the child/ren will spend with each parent and significant others (for example, grandparents and other extended family members);
- How and when the child/ren will communicate with significant parties;
- How parents will communicate about “parenting matters”, moving forward; and,
- Specific issues, such as: schooling, medical treatments, travel arrangements, etc.

There is no requirement for parents to seek legal intervention post-separation. In fact, the majority of separating couples are able to amicably decide on parenting arrangements.

### **Informal and Formal Arrangements**

The *Family Law Act 1975* (Cth) provides for parenting agreements in the form of Parenting Plans and Parenting Orders (either by consent or Court Order). Parents can have either an informal or formal agreement, in respect to their parenting arrangements. Informal agreements can be verbal or written. Informal agreements **are not legally enforceable**, but have the advantage of being flexible and responsive to the changing needs of children and parents. Formal agreements such as Consent Orders or Court Orders **are legally enforceable**.

### **Parenting Plans**

A Parenting Plan is simply the parents’ agreement, in writing, which is signed and dated by both parents. Parenting Plans can be cancelled/varied by new written agreements (which are likewise signed and dated). Parenting Plans are **not legally enforceable**. The Court could, however, take a Parenting Plan into consideration, as evidence of the parenting arrangements, should the matter proceed to Court.

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In addition, Parenting Plans can sometimes be used by parents as an informal way of making variations to previous Parenting Orders. Although the new Parenting Plan provisions will **not be legally enforceable**, they may be used as evidence of the current agreement if the matter did go back to Court.

### **Parenting Consent Orders**

Parenting Orders, by Consent, are just the agreed parenting arrangements in a **legally binding form**. Parenting Consent Orders can be varied by further Consent Orders, an updating Parenting Plan (in some circumstances) or otherwise by a Court Order.

Parties can apply for Consent Orders by filling in an *Application for Consent Orders*, together with their draft terms of settlement. The application must contain information about the children and arrangements. The application fee for Consent Orders is currently \$145. The Court will only sanction the Orders if they appear to be in **the best interests of the child/ren**.

### **Where parties cannot agree**

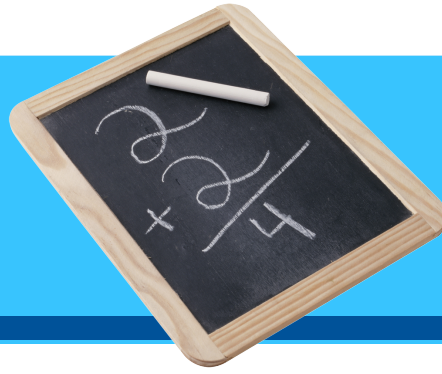
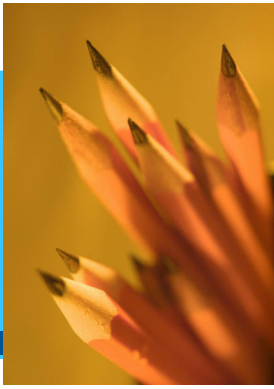
Where parents cannot agree about children's issues, and parenting arrangements, there are various options available. These include:

- Asking a family or friend to act as a neutral go-between;
- Formal Family Dispute Resolution (i.e. attendance at mediation);
- Solicitor-based negotiation; or,
- Court action (for example; urgent matters; matters involving family violence and/or abuse/neglect of children; or high conflict).

Where parents cannot agree about parenting arrangements they can file an *Initiating Application*, with the Family Court or the Federal Circuit Court of Australia, and a Judge will make a determination on the issue. This means that a third party, the Judge, will make decisions about what's in **the best interests of your child/ren**.

Parenting Orders **are legally enforceable**. Where a party fails to comply with the Orders, without reasonable excuse (for example, an alternate agreement), then the other party can file a *Contravention Application*. If the breach is substantiated, without reasonable excuse, the Court may either vary the Orders; fine the breaching parent; or possibly order a term of imprisonment.

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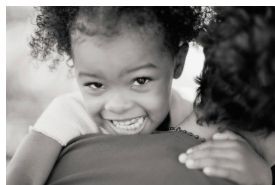


### **Best Interests of the Child**

When determining the **best interests of the child/ren** the primary considerations, per section 60CC of the *Family Law Act 1975* (Cth), are having a meaningful relationship with both parents, and being protected from physical or psychological harm, abuse, neglect and/or family violence – with the latter consideration being paramount.

When determining the best interests, further considerations include:

- The child's views and factors that might affect those views, such as the child's maturity and level of understanding;
- The child's relationship with each parent and other people, including grandparents and other relatives;
- The likely effect on the child of changed circumstances, including separation from a parent or person with whom the child has been living, including a grandparent or other relatives;
- The practical difficulty and expense of a child spending time with and communicating with a parent;
- Each parent's ability (and that of any other person) to provide for the child's needs;
- The maturity, sex, lifestyle and background of the child and of either of the child's parents, and any other characteristic of the child that the Court thinks are relevant;
- The right to know their culture;
- The right of an Aboriginal or Torres Strait Islander child to enjoy his or her culture and the impact a proposed Parenting Order may have on that right;
- The attitude of each parent to the child and to the responsibilities of parenthood;
- Whether it would be preferable to make the Order that would be least likely to lead to further Court applications and hearings in relation to the child;
- Any other fact or circumstance that the Court thinks relevant.



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